IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

WRIT PETITION NO. 3152 OF 2003

BETWEEN

S.D.Pathak S/o Late Vishwanath Pathak, aged about 60 years, occupation District Organisor, A.J.K. Janjgir Champa, District Janjgir Champa (CG).

PETITIONER

P.R. No. 3062/03
Presented by Shri Aman Kashyap
dated 02.10.03

A N D

1. The State of Chhattisgarh, Through the Secretary Department of Adim Jati Kalyan ,Mantralay, D.K.S. Bhawan Raipur, Tehsil and District Raipur.

2. The Deputy Secretary, State of Chhattisgarh, Aadim Jati Tatha Anusuchit Jati Vikas Vibhag, Mantralay, D.K.S.Building,Raipur.

3. Het Ram Chouhan, Assistant Pariyojna Prashasak, Ekikrit Aadivasi Pariyojna Baikuntpur, District Korea (CG).

RESPONDENTS

RECEIVED COPY. 2/10/03 A.G. BILASPUR

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.3152 of 2003

S.D. Pathak

Versus

State of Chhattisgarh and others

POST FOR ORDER ON 05.01.2004

Sd/-
L.C.BHADOO
Judge
05.01.2004

(8c)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.3152 of 2003

S.D. Pathak

Versus

State of Chhattisgarh and others

Present: -

Mr. Awadh Tripathi, Advocate: For the petitioner

Mr. Ranbir Singh, Govt. Advocate: For the State/respondents 1 & 2

Miss Rema Kesharwani, Advocate: For respondent No.3

Before: Hon'ble Shri Justice L.C. Bhadoo

O R D E R

(Passed on 5th January, 2004)

1. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has challenged his transfer order dated 29.09.2003 passed by respondent No.2 whereby the petitioner has been transferred from the post of District Organizer, Janjgir, to the post of Assistant Project Officer Integrated Scheduled Tribe Project, Baikunthpur.

2. The main grievance of the petitioner is that the petitioner is going to retire on the last day of January, 2004, on attaining the age of superannuation i.e. within four months from the date of his transfer. As per the Government policy, he cannot be transferred because the employees retiring within two years should not be transferred generally and if at all it is necessary, they should be transferred in the home district or in the near by district. The second challenge to the transfer is that this transfer order has not been issued on the ground of administrative exigency, but the same has been issued in order to

accommodate respondent No.3. The hometown of the petitioner is Bilaspur and he has been transferred to Baikunthpur, which is far away from Bilaspur. The other grievance of the petitioner is that he has been transferred on a lower post.

3. Whereas, respondents 1 & 2 in their return have submitted that it is not correct that the petitioner has been transferred in order to adjust respondent No.3, on the contrary, the petitioner has been transferred on the ground of administrative exigency, because there were complaints against the petitioner with regard to the period when he remained posted at Janjgir-Champa and in that connection charge sheet (Annexure R-1) was issued to the petitioner. It has further been mentioned in the return that the petitioner's residence, as shown in the service record, is Varanasi and Baikunthpur is near to Varanasi. The post of District Organizer and that of Assistant Project Administrator are one and the same and the post of Assistant Project Administrator is not a lower post. Moreover, the petitioner has already been relieved on 8th of October, 2003, therefore, the petition be dismissed.

4. Return has also been filed on behalf of respondent No.3, who has been transferred in place of the petitioner, in which it has been mentioned that he has already taken over on the transferred post on 7th of October, 2003, and he has been transferred from Baikunthpur to Janjgir-Champa after completion of his tenure at Baikunthpur, because he was working there since last more than three years.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner submitted that the petitioner has already filed reply to the charge sheet (Annexure R-1) issued against the petitioner and so far no action has been taken against him and the petitioner has not committed any misconduct. 'He further argued that the petitioner has been transferred in order to adjust respondent No.3 and that too against the Government policy. On the other hand,

learned counsel for respondents 1 & 2 argued what has been mentioned in the return.

7. It is true that as per the guidelines issued by the erstwhile State of Madhya Pradesh, Department of General Administration on 23rd April, 1997, sub-clause (13) of Clause 3 lays down that generally the officers who are retiring within two years should not be transferred and if the transfer is essential then as far as possible they should be transferred in the home district or in the near by district. This circular lays down that generally those officers should not be transferred who are going to retire within two years, but it is not mandatory and exception is there; the officers can be transferred because the word used in this Government instruction is that 'generally' they should not be transferred. There is no clear cut bar on transferring those employees who are going to retire within two years. This instruction has been issued with the objective that normally within six months to one year prior to the date of retirement the pension case of a Government employee is processed and if during this period he is transferred then on transferred place his service record is not available and that creates difficulty in processing the pension case of a Government employee. The other ground is that at the fag end of the career the family of the retiring employee should not be disturbed and as far as possible, he should be posted in the home district or in the nearby district, so that he can settle his family before his retirement. But the Government is always within its right to transfer any Government employee on the ground of administrative exigency.

8. In this case, as has been mentioned in the return filed by respondents 1 & 2 that there were complaints against the petitioner and on the basis of those complaints charge sheet was issued against the petitioner on 08.09.2003 i.e. twenty days before the passing of impugned order, perusal of which shows that in all seven charges are levelled against the petitioner and most of them are regarding financial irregularities and

lack of interest in the work and as well as transferring the employees without prior approval of the competent authority. It is true that the reply has been filed on behalf of the petitioner, but that is not the end of the matter and the matter is still pending and it has been specifically mentioned by the respondents that the petitioner was transferred on account of these complaints and the administrative exigency. Therefore, in view of the above fact, the ground taken by the petitioner that the petitioner should not have been transferred, as his date of retirement was due within four months from the date of transfer is of no avail to the petitioner.

9. In view of the above facts, I do not find any substance in the grievance of the petitioner that he has not been transferred on the administrative exigency. It is true that perusal of order (Annexure R-1) reveals that respondent No.3 has been transferred in place of the petitioner on his own expenses which shows that respondent No.3 was transferred on his own request, but respondent No.3 had already completed his tenure more than three years at Baikunthpur and it has not come on record that respondent No.3 specifically asked for the present post only. Therefore, in the circumstances, it cannot be inferred that the petitioner was transferred in order to accommodate respondent No.3 and the home district of the petitioner in his service record is still Varanasi and it cannot be said that he has been transferred at a far of place. Moreover, the petitioner has already been relieved.

10. Therefore, I do not find any substance in this writ petition and the same is liable to be dismissed. Accordingly, the petition is dismissed. However, there is no order as to costs.

Sd/-
L.C.BHADOO
Judge

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